

THE EFFECTIVE DATE OF THIS ORDINANCE IS JANUARY 17, 2006

ORDINANCE NO. 06-04-400

**RE: CHANGES TO APFO REGARDING DEVELOPER-FUNDED PROJECTS IN THE
CIP AND SCHOOLS UNDER RENOVATION**

Under the authority granted by §10.01 of Article 66B of the Maryland Code and in §1-20-23 of the Frederick County Code (Code), the Board of County Commissioners of Frederick County desires to adopt certain amendments to the Adequate Public Facilities Ordinance (APFO) (Chapter 1-20 of the Code).

The proposed changes are shown on Exhibits 1 and 2 to this Ordinance. Exhibit 1 describes how improvement projects which are wholly or partially funded by a developer and included in the first two years of the County's Capital Improvement Program (CIP) will be treated for purposes of APFO approval. Exhibit 2 describes how the capacity of schools under renovation and schools used to house students from a school under renovation will be counted for purposes of APFO schools testing.

The Board of County Commissioners held a duly advertised public hearing on January 17, 2006, during which the public had an opportunity to comment on this proposed Ordinance.

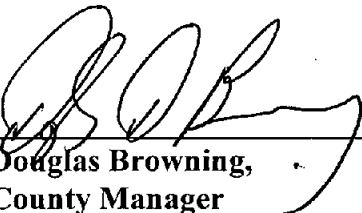
NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that the amendments to the APFO which are shown on Exhibits 1 and 2 are hereby adopted.

This Ordinance shall be effective January 17, 2006.

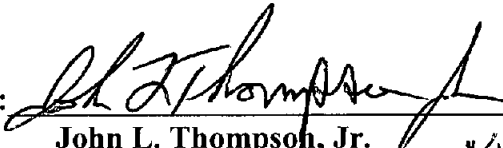
The undersigned hereby certifies that this Ordinance was adopted on the 17th day
of January, 2006.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND**



Douglas Browning,
County Manager

By:  (SEAL)

John L. Thompson, Jr.
President

KLM
1/17/06

EXHIBIT 1

ARTICLE I: GENERAL

* * *

§ 1-20-5. DEFINITIONS.

- (A) The following rules of construction shall apply to the text of the chapter.
- (1) The particular will control the general.
 - (2) The words "shall" and "will" are always mandatory and not discretionary. The word "may" is permissive.
 - (3) Words used in the present tense include the future; and words used in the singular number include the plural; and the plural includes the singular; words of the masculine gender will include the feminine and the neuter gender will refer to any gender as required, unless the context plainly indicates the contrary.
 - (4) A building or structure includes any part thereof.
 - (5) The phrase "used for" includes "arranged for, designed for, intended for, maintained for, or occupied for."
 - (6) The word person includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
 - (7) Unless it is plainly evident from the context that a different meaning is intended, a regulation which involves 2 or more items, conditions, provisions, or events connected by the conjunction "and, or," or "either ... or," the use of the conjunction is defined as follows:
 - (a) AND. All the connected items, conditions, provisions, and events apply together and not separately.
 - (b) OR. The connected items, conditions, provisions, or events apply separately or in any combination.
 - (c) EITHER ... OR. The connected items, conditions, provisions, or events shall apply separately but not in combination.
 - (8) The word "includes" does not limit a term to the specified examples, but is intended to extend the term's meaning to all other instances or circumstances of like kind or character.
 - (9) When a term defined in the county subdivision regulations, zoning ordinance, or the county building code occurs in this chapter, it has the meanings specified in the subdivision regulations, zoning ordinance or building code, unless specifically defined in this chapter.
 - (10) The word "county" means Frederick County, Maryland. The word "state" means the State of Maryland.
 - (11) Throughout this chapter, all words, other than the terms specifically defined herein, have the meaning inferred from their context in this chapter or their ordinarily accepted definitions.

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

(B) In this chapter, the following terms are used as defined unless otherwise apparent from the context.

ADEQUATE PUBLIC FACILITIES (APF). Those public facilities included in the context of this chapter which meet established minimum standards as further specified herein.

ADEQUATE PUBLIC FACILITY LETTER OF UNDERSTANDING. A letter from the Planning Commission to the developer which sets forth all terms, conditions and restrictions which must be satisfied for a finding of adequacy.

AMEND or AMENDMENT. Any repeal, modification, or addition to a regulation; any new regulation.

BACKGROUND ENROLLMENT GROWTH. The average annual impact of equated student enrollment changes during the preceding 3 years in the school attendance areas serving the proposed development as determined in § 1-20-61(G) with appropriate adjustments made in the determination by the Frederick County Public Schools to eliminate student enrollment changes caused solely by school redistricting.

CAPITAL IMPROVEMENT PROGRAM (CIP). An annual document adopted by the county indicating county capital projects having funding approval for the current fiscal year and those capital projects which are currently planned for the following 5 year period, including the proposed means of financing the same.

CAPITAL BUDGET. The current and first year of the approved CIP.

COMPREHENSIVE PLAN. A composite of mapped and written text, the purpose of which is to guide the physical development of the county, and is adopted by the Board of County Commissioners and includes all changes and additions thereto made under the provisions of Md. Code Ann., Art. 66B.

CONSOLIDATED TRANSPORTATION PROGRAM (CTP). An annual document prepared by the Maryland Department of Transportation and approved by the Maryland General Assembly indicating state transportation projects which have funding approval for the current fiscal year and those projects which are planned for the following 5 year period.

CONSOLIDATED TRANSPORTATION PROGRAM (CTP). An annual document prepared by the Maryland Department of Transportation and approved by the Maryland General Assembly indicating state transportation projects which have funding approval for the current fiscal year and those projects which are planned for the following 5 year period.

DEVELOPER. An individual, partnership, corporation (or agent thereof), or other entities that undertakes the responsibility for any or all of the activities covered by this chapter

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

and Chapters 1-16 and 1-19, particularly the designing of a subdivision plat or site development plan showing the layout of the land and the public improvements involved therein. In as much as the subdivision plat is merely a necessary means to the end of assuring a satisfactory development, the term DEVELOPER is intended to include the term SUBDIVIDER, even though the personnel involved in successive stages of the project may differ.

DEVELOPER-FUNDED. IMPROVEMENTS OR FACILITIES WHICH ARE:
(1) TO BE PROVIDED OR FUNDED BY A DEVELOPER AS SET FORTH IN AN
EXECUTED ADEQUATE PUBLIC FACILITY LETTER OF UNDERSTANDING OR
SIMILAR AGREEMENT; AND (2) GUARANTEED BY CASH ESCROW, LETTER OF
CREDIT, OR OTHER FORM OF GUARANTEE ACCEPTABLE TO THE COUNTY
ATTORNEY.

DEVELOPMENT. The area of land which is subject to change in use (preliminary plan or site plan approval) or expansion of existing use and which is subject to subdivision or site plan review.

[Balance of section unchanged]

ARTICLE III: ROADS

§ 1-20-31. DETERMINATION OF ADEQUACY.

(A) For all development applications meeting the threshold criteria outlined in § 1-20-30, a traffic impact study (TIS) shall be prepared by the developer and submitted to the Department of Planning and Zoning which will review it along with the Department of Public Works. The portion of existing road(s) required to be adequate shall be determined by the Department of Planning and Zoning in consultation with the Department of Public Works based on a pre-study conference or documented correspondence between the county and the developer. The Department of Public Works shall use as its guidelines the following 2 paragraphs, but may, in consultation with the developer, adopt a reasonable study area based on sound traffic engineering knowledge of the site and the situation. Any disputes regarding study area or scope shall be resolved by the Planning Commission.

(1) The portion of the existing road(s) required to be adequate for a proposed development located in an area designated as agricultural/rural or conservation in the County Comprehensive Plan shall be from the site's planned entrance(s) to the nearest intersection of an arterial road or freeway/expressway with a collector road, in the direction(s) of traffic flow anticipated by the Department of Public Works unless the pre-study conference determines otherwise.

(2) The portion of the existing road(s) required to be adequate for a proposed development located in an area having a designation other than agricultural/rural or conservation on the County Comprehensive Plan shall be from the site's planned entrance(s) to the nearest intersection of an arterial road or freeway/expressway with an arterial road, in the direction(s) of

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

traffic flow anticipated by the Department of Public Works unless the pre-study conference determines otherwise.

(3) All primary and interstate highways shall be exempt from the requirements herein.

(4) All other roads, including county roads, roads within municipal corporations and secondary highways, shall be subject to the requirements herein.

(B) The TIS shall be prepared for the design hours, which are defined as the peak hours which will be most affected by the proposed development; i.e., any combination of a.m., mid-day, p.m., evening, weekend, or school hours as determined via the pre-study agreement. The TIS will include, but not be limited to:

(1) A written description of the site boundaries and characteristics which the study has been based upon, including development size, land usage, proposed parking, etc., a graphical depiction of the site location, and, where helpful, a graphical summarization of any unique site-plan characteristics;

(2) Existing conditions, including existing traffic volumes recorded when school is in session (unless in the opinion of the Department of Public Works significant circumstances preclude this), existing lane usage, existing levels of service (LOS), and a thorough study area descriptive narrative of the physical roadway conditions, including all controls, constraints, and deficiencies;

(3) Vehicle trip generation and design hour volumes generated by the proposed development and traffic expected to be generated by approved development in the study areas as determined by the Zoning Administrator. For minor commercial/industrial subdivision projects the applicant shall have the option to:

(a) Specify particular uses for traffic analysis; or

(b) Use the highest traffic generating use; or

(c) Limit the property usage to a traffic level below the APFO threshold and such restrictions shall be noted on the plat. The latest edition of the ITE "Trip Generation Manual" is to be used unless specifically applicable rates (county comparables, individual generator studies, etc.) are identified and accepted by the Department of Public Works. Approved background development traffic impacts will be pro-rated to coincide with the length of time for which APFO approval is requested for the proposed project in proportion to the approved background projects;

(4) Trip distribution and traffic assignment based upon sound planning judgement of the future conditions;

(5) Growth in through-traffic as determined from historical data or other planning factors affecting future traffic volumes. Growth rates will be applied only to the "through" trips at the intersection;

(6) LOS capacity analysis of all required intersections and links (where necessary) for existing conditions and all intermediate and ultimate future conditions with and without the proposed development;

(7) In cases where traffic safety is identified as an issue at the pre-study conference, reported traffic accidents for the last 5 years;

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

(8) Roadway and bridge improvements programmed or currently funded for construction in the most recent capital budget or second year of CIP. HOWEVER, IF ROADWAY AND BRIDGE IMPROVEMENTS ARE IN THE MOST RECENT CAPITAL BUDGET OR THE SECOND YEAR OF THE CIP AND ARE DEVELOPER-FUNDED, THOSE IMPROVEMENTS MAY NOT BE INCLUDED IN THE TIS FOR ANY OTHER DEVELOPMENT UNTIL THE IMPROVEMENTS ARE COMPLETED, SUBJECT TO SECTION 1-20-31(G). IF A DEVELOPER HAS PROVIDED FUNDS FOR A PORTION OF DEVELOPER-FUNDED IMPROVEMENTS IN THE MOST RECENT CAPITAL BUDGET OR THE SECOND YEAR OF THE CIP, THAT PORTION OF THE DEVELOPER-FUNDED IMPROVEMENTS MAY NOT BE INCLUDED IN THE TIS FOR ANY OTHER PROPOSED DEVELOPMENT UNTIL THE IMPROVEMENTS ARE COMPLETED, SUBJECT TO SECTION 1-20-31(G);

(9) Improvements funded in the current or second budget year of the Maryland Department of Transportation (MDOT) Consolidated Transportation Program; and

(10) Any other information that may reasonably be required by the Department of Planning and Zoning or the Department of Public Works to effectively evaluate the road network or application.

(C) All traffic studies shall use the critical lane method (CLM) of analysis at all intersections and when required the Highway Capacity Manual (HCM) for roadway links capacity at peak hour traffic flow. Additionally, at signalized intersections, the HCM method must also be employed. The developer is responsible to confirm and use the existing signal timings when analyzing existing conditions. A technical description of the CLM technique is given in the January 1971 issue of Traffic Engineering and county staff will have available copies. The following specific treatments will be applied to the CLM analysis.

(1) All nonsignalized intersections will be modeled as simple 2-phased operations; i.e., run N-S together, and then E-W together.

(2) The following lane use factors (L.U.F.) will be used:

Number of Approach	
Lanes	L.U.F.
1	1.00
2	0.55 (THRU LANES) 0.60 (TURN LANES)
3	0.40 (THRU LANES) 0.45 (TURN LANES)
4 or more	0.30

(3) "Free right turns" (which are not analyzed in the CLM method) are defined as movements typically isolated by channelization and controlled by a yield sign. Only if the right-turning vehicles are isolated from the queue of through vehicles on the approach leg, and there is sufficient exclusive acceleration opportunity on the turn leg, can they be excluded from the analysis.

(4) Right-turn-on-red (RTOR) "credits" generally will not be allowed unless it can be demonstrated/documented that RTORs are occurring at the intersection; even then, only

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

low-volume intersections will be considered as candidate intersections.

(5) Where no separate left turn lanes occur at high volume intersections, the left-most approach lane should be assumed to handle all the lefts, with the other lanes carrying the through traffic and rights, etc. actual observations/documentation of other conditions will be reviewed on a case-by-case basis.

(6) On 1 lane approaches where a bypass of left-turning vehicles exists, a separate left turn lane can be assumed. Otherwise, the volumes should be combined.

(7) The following CLM Level of Service (LOS) criteria shall be used.

Critical Lane Volume	LOS Grades
1,000	A
1,001-1,150	B
1,151-1,300	C
1,301-1,450	D
1,451-1,600	E
1,601	F

(8) (a) Passby/intercept trips may be assumed when the tested street traffic volume is greater than 10,000 ADT. Otherwise, all trips must be modeled as "new" trips. Unless otherwise supported by first-hand data the maximum allowable credits for primary "passby/intercept" trips for a particular land use shall be as follows:

Sit-down restaurant	30%
Fast food restaurant	60%
Day-care (on collector or arterial street)	20%
Day-care (in a PUD)	(*)
Service stations	60%
Convenience stores	60%
Retail less than 40,000 square feet (S.F.)	50%
Retail 40,000 S.F. or greater but less than 100,000 S.F.	35%
Retail 100,000 S.F. or greater	25%

(b) Secondary and diverted trips from parallel networks shall not be considered.

(c) (*) 80% of trips assumed to originate within the PUD; 20% assigned to outside the PUD.

(9) Where a project is testing a state highway and the specific factors of subsection (C) are different than those used by the State Highway Administration (SHA), then both the SHA factors and the specific factors of subsection (C) shall be applied and the more stringent result shall be used.

(D) The following level of service criteria shall be met to determine road adequacy.

(1) Roads and intersections located in areas designated agricultural/rural or

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

conservation in the County Comprehensive Plan shall be considered adequate if a LOS "C" or better is maintained using the critical lane method (CLM). Roads and intersections located in areas having designations other than agricultural/rural or conservation on the County Comprehensive Plan shall be considered adequate if a LOS "D" or better is maintained using the CLM. Further, for signalized intersections only, which are also required to be analyzed using the highway capacity manual method (HCM), the overall intersection LOS must be "D" or better to be considered adequate. Required mitigations, if any, will be reviewed on a case-by-case basis.

(2) Roadway links when required by staff based on sound traffic engineering principles shall be determined to be acceptable if actual capacity does not exceed 75% of rated capacity. Average daily traffic (ADT) counts will be required by staff at both link-ends when mid-block intersections are present.

(E) If a future condition is determined to be inadequate to accommodate the traffic flow projected by the TIS, the preliminary plat, PUD Phase II or site plan approval shall be denied except as provided for in § 1-20-10.

(F) Road improvements necessary to meet the standards herein shall be determined by the Planning Commission after reviewing the entire record, including TIS, road volume capacity, structural adequacy of the pavement, alignment, sight distance, structural conditions, design, lane width and Maryland State Highway Administration comments; and improvements may be provided by the developer as prescribed in § 1-20-11.

(G) Upon completion of construction of APFO road improvements for a development, the APFO road approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO roadway testing unless the density or intensity of the development increases.

ARTICLE IV: PUBLIC WATER SUPPLY

* * *

§ 1-20-41. DETERMINATION OF ADEQUACY.

(A) A public or private community water system shall be considered adequate if, given existing connections, future connections from buildings under construction, recorded lots for which allocations have been made and multi-year tap agreements:

(1) The source facilities, storage tanks and local pumping stations have sufficient available capacity to provide maximum day demand to the proposed development and meet peak hour demand in addition to fire flow; and

(2) The distribution system is capable of providing normal required pressure as well as minimal residual pressure to the proposed development. It should be noted that water taps are not guaranteed for the project until such taps are purchased or a multi-year tap agreement has been executed between the county and developer.

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

(B) A public or private community water system may also be considered adequate if improvements to or construction of facilities necessary to comply with standards established in subsection (A) are scheduled in the first 2 years of the CIP. HOWEVER, WHERE IMPROVEMENTS TO OR CONSTRUCTION OF FACILITIES NECESSARY TO COMPLY WITH SUBSECTION (A) ARE IN THE FIRST 2 YEARS OF THE CIP AND ARE DEVELOPER-FUNDED, NO OTHER PROPOSED DEVELOPMENT MAY UTILIZE THE CAPACITY CREATED BY THE DEVELOPER-FUNDED IMPROVEMENTS OR FACILITIES TO DETERMINE ADEQUACY UNDER THIS ARTICLE UNTIL THE IMPROVEMENTS OR FACILITIES ARE COMPLETED, SUBJECT TO SECTION 1-20-41(E). IF ONLY A PORTION OF THE IMPROVEMENTS OR FACILITIES IN THE FIRST 2 YEARS OF THE CIP ARE DEVELOPER-FUNDED, THAT PORTION OF THE IMPROVEMENTS OR FACILITIES MAY NOT BE USED TO DETERMINE ADEQUACY OF ANY OTHER PROPOSED DEVELOPMENTS UNTIL THE IMPROVEMENTS OR FACILITIES ARE COMPLETED, SUBJECT TO SECTION 1-20-41(E).

(C) If a public or private water system is found to be inadequate, site plan, PUD Phase II or preliminary subdivision approval shall be denied except as provided for in § 1-20-10.

(D) Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as allowed for in § 1-20-11.

(E) Upon completion of construction of APFO public or private community water improvements for a development, the APFO water approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO water testing unless the density or intensity of the development increases.

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

ARTICLE V: SEWERAGE FACILITIES

* * *

§ 1-20-51. DETERMINATION OF ADEQUACY.

(A) The sewerage system shall be considered adequate if, given existing connections, future connections from buildings under construction, recorded lots for which allocations have been made and multi-year tap agreements, the systems designed to serve the proposed development are sufficient to accommodate ultimate peak flows. It should be noted that sewer taps are not guaranteed for the project until such taps are purchased or a multi-year tap agreement has been executed between the county and developer.

(B) The sewerage system may also be considered adequate if improvements to or construction of facilities necessary to comply with standards established in [division] SUBSECTION (A) are scheduled in the first 2 years of the CIP. HOWEVER, WHERE IMPROVEMENTS TO OR CONSTRUCTION OF FACILITIES NECESSARY TO COMPLY WITH SUBSECTION (A) ARE IN THE FIRST 2 YEARS OF THE CIP AND ARE DEVELOPER-FUNDED, NO OTHER DEVELOPMENT MAY UTILIZE THE CAPACITY CREATED BY THE NEW OR IMPROVED FACILITIES TO DETERMINE ADEQUACY UNDER THIS ARTICLE UNTIL THE IMPROVEMENTS OR FACILITIES ARE COMPLETED, SUBJECT TO SECTION 1-20-51(E). IF ONLY A PORTION OF THE IMPROVEMENTS OR FACILITIES IN THE FIRST 2 YEARS OF THE CIP ARE DEVELOPER-FUNDED, THEN THAT PORTION OF THE IMPROVEMENTS OR FACILITIES MAY NOT BE USED BY ANY OTHER DEVELOPMENT TO DETERMINE ADEQUACY UNDER THIS ARTICLE UNTIL THE IMPROVEMENTS OR FACILITIES ARE COMPLETED, SUBJECT TO SECTION 1-20-51(E).

(C) If a sewerage system is found to be inadequate, site plan, PUD Phase II or preliminary subdivision approval shall be denied except as provided for in § 1-20-10.

(D) Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as allowed for in § 1-20-11.

(E) Upon completion of construction of APFO sewerage system improvements for a development, the APFO sewerage approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO sewerage system testing unless the density or intensity of the development increases.

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

ARTICLE VI: SCHOOLS

* * *

§ 1-20-61. DETERMINATION OF ADEQUACY.

(A) All public elementary, middle and high schools serving the proposed subdivision shall be adequate or adequate capacity must be scheduled for construction within the first 2 years of the CIP. HOWEVER, WHERE NEW OR IMPROVED SCHOOL FACILITIES ARE SCHEDULED FOR CONSTRUCTION WITHIN THE FIRST 2 YEARS OF THE CIP AND ARE DEVELOPER-FUNDED, NO OTHER DEVELOPMENT MAY USE THE CAPACITY CREATED BY THE NEW OR IMPROVED FACILITIES TO DETERMINE ADEQUACY UNDER THIS ARTICLE UNTIL THE FACILITIES ARE COMPLETED. IF ONLY A PORTION OF THE NEW OR IMPROVED FACILITIES WHICH ARE SCHEDULED FOR CONSTRUCTION WITHIN THE FIRST 2 YEARS OF THE CIP ARE DEVELOPER-FUNDED, THEN THAT PORTION OF THE CAPACITY MAY NOT BE USED BY ANY OTHER DEVELOPMENT TO DETERMINE ADEQUACY UNDER THIS ARTICLE UNTIL THE FACILITIES ARE COMPLETED. The CIP project and the proposed development must be located within the same school attendance boundaries, including areas where redistricting boundaries have been approved.

(B) (1) The Frederick County Public Schools will provide actual enrollment data to the county for the last school day of September, December, March and June and the state rated capacity for each elementary and secondary school. Adequacy of every elementary, middle and high school serving the proposed development shall be determined as of the date of plan submission, or the first date upon which all necessary APFO documentation and materials have been submitted, whichever occurs last, based upon data as published by the Frederick County Public Schools. If approval has not been received from the Planning Commission within 6 months of the date of plan submission, the most recent quarterly school enrollment data must be utilized by the Commission for APFO review unless a delay occurs not attributable to the applicant.

(2) For determining adequacy, enrollment shall mean the Frederick County Public Schools official enrollment figures plus background enrollment plus pupils generated from the proposed development.

(3) Pupil generation rates shall be determined using the formulas adopted by the Frederick County Public Schools and shall reflect the characteristics of the school attendance area within which the proposed development is located. Pupil yield from the proposed development shall be pro-rated over the number of years for which APFO approval is sought. State rated capacities and pupil generation rates approved for use by the Frederick County Public Schools shall be used in all calculations.

(C) An elementary school shall be considered adequate if the enrollment is less than

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

100% of state- rated capacity. A secondary school shall be considered adequate if enrollment is less than 100% of state rated capacity.

(D) If a school is not adequate as defined in (C) and an adjoining school district at the same level is at least 20% below state rated capacity, then the applicant may request the Frederick County Board of Education (BOE) to determine the viability of redistricting to accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the BOE approves a specific redistricting plan that would result in all the schools serving the proposed development meeting the standards established in (C), then the school shall be considered adequate.

(E) If a school is not adequate, and the BOE has not approved a specific redistricting plan that would result in the school meeting the standards established in division (C), then the preliminary subdivision, PUD Phase II or site plan approval shall be denied, except as allowed for in § 1-20-10.

(F) Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as allowed for in § 1-20-11.

(G) Background enrollment growth will be extrapolated over the number of years for which APFO approval is requested. Included in the calculations shall be any additional approved but unplatted major preliminary plan developments in the affected area which might impact the historical growth trend to make it inaccurate or obsolete by a factor of 35% or more.

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

EXHIBIT 2

ARTICLE VI: SCHOOLS

§ 1-20-60. THRESHOLDS.

This article applies only to residential development.

§ 1-20-61. DETERMINATION OF ADEQUACY.

(A) All public elementary, middle and high schools serving the proposed subdivision shall be adequate-or adequate capacity must be scheduled for construction within the first 2 years of the CIP. The CIP project and the proposed development must be located within the same school attendance boundaries, including areas where redistricting boundaries have been approved.

(B) (1) The Frederick County Public Schools will provide actual enrollment data to the county for the last school day of September, December, March and June and the state rated capacity for each elementary and secondary school. Adequacy of every elementary, middle and high school serving the proposed development shall be determined as of the date of plan submission, or the first date upon which all necessary APFO documentation and materials have been submitted, whichever occurs last, based upon data as published by the Frederick County Public Schools. If approval has not been received from the Planning Commission within 6 months of the date of plan submission, the most recent quarterly school enrollment data must be utilized by the Commission for APFO review unless a delay occurs not attributable to the applicant.

(2) For determining adequacy, enrollment shall mean the Frederick County Public Schools official enrollment figures plus background enrollment plus pupils generated from the proposed development.

(3) Pupil generation rates shall be determined using the formulas adopted by the Frederick County Public Schools and shall reflect the characteristics of the school attendance area within which the proposed development is located. Pupil yield from the proposed development shall be pro- rated over the number of years for which APFO approval is sought. State rated capacities and pupil generation rates approved for use by the Frederick County Public Schools shall be used in all calculations.

(C) An elementary school shall be considered adequate if the enrollment is less than 100% of state- rated capacity. A secondary school shall be considered adequate if enrollment is less than 100% of state rated capacity.

(D) If a school is not adequate as defined in (C) and an adjoining school district at the same level is at least 20% below state rated capacity, then the applicant may request the Frederick County Board of Education (BOE) to determine the viability of redistricting to

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].

accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the BOE approves a specific redistricting plan that would result in all the schools serving the proposed development meeting the standards established in (C), then the school shall be considered adequate.

(E) If a school is not adequate, and the BOE has not approved a specific redistricting plan that would result in the school meeting the standards established in division (C), then the preliminary subdivision, PUD Phase II or site plan approval shall be denied, except as allowed for in § 1-20-10.

(F) Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as allowed for in § 1-20-11.

(G) Background enrollment growth will be extrapolated over the number of years for which APFO approval is requested. Included in the calculations shall be any additional approved but unplatted major preliminary plan developments in the affected area which might impact the historical growth trend to make it inaccurate or obsolete by a factor of 35% or more.

(H) FOR THE PURPOSES OF DETERMINING ADEQUACY UNDER THIS SECTION, THE AVAILABLE CAPACITY OF A SCHOOL WHICH IS COMPLETELY OR PARTIALLY CLOSED FOR RENOVATION SHALL BE THE PERCENTAGE OF THE SCHOOL STATE RATED CAPACITY AVAILABLE AND CERTIFIED FOR USE BY THE BOARD OF EDUCATION OR DESIGNATED FCPS STAFF. ONE-HUNDRED PERCENT OF THE AVAILABLE STATE RATED CAPACITY OF THE SCHOOL UNDER RENOVATION SHALL BE CONSIDERED TO BE AVAILABLE SIX MONTHS PRIOR TO THE EXPECTED RENOVATION COMPLETION DATE AS CERTIFIED BY THE BOARD OF EDUCATION OR DESIGNATED FCPS FACILITIES STAFF.

(I) FOR THE PURPOSES OF DETERMINING ADEQUACY UNDER THIS SECTION, THE AVAILABLE CAPACITY OF A SCHOOL WHICH IS BEING UTILIZED TO SERVE STUDENTS FROM ANOTHER SCHOOL WHICH IS UNDER RENOVATION SHALL BE THE PERCENTAGE OF THE SCHOOL STATE RATED CAPACITY AVAILABLE AND CERTIFIED FOR USE BY THE BOARD OF EDUCATION OR DESIGNATED FCPS STAFF. ONE-HUNDRED PERCENT OF THE AVAILABLE STATE RATED CAPACITY OF THE SCHOOL SHALL BE CONSIDERED TO BE AVAILABLE SIX MONTHS PRIOR TO THE EXPECTED RENOVATION COMPLETION DATE AS CERTIFIED BY THE BOARD OF EDUCATION OR DESIGNATED FCPS FACILITIES STAFF.

CAPITALS AND/ OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

Matter deleted from the existing law is indicated by [brackets].